

REMARKS

In an Office Action mailed on March 4, 2004, claims 1, 4, 5, 7-9, 11, 14, 17, 19, 20, 21, 23, 25-27, 29-31, 33, 35, 37, 42, 43, 46 and were rejected under 35 U.S.C. § 102(e) as being anticipated by Bray; claims 6, 10 and 15 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Bray; claims 12, 13, 32, 34, 36, 38 and 49 were objected to as being dependent upon rejected base claims but allowable if rewritten in independent form; and claims 39-41, 44, 45, 50 and 51 were allowed. Claim 52 has been cancelled to overcome the corresponding objection to this claim. The §§ 102 and 103 rejections are addressed below.

Rejections of Claims 1-11, 31 and 42:

The transmission system of independent claim 1 recites that the data management module accesses configuration information contained in the transmitter module to determine at least one predefined transmission characteristics and modify data flow management based on this characteristic(s).

In the § 102 rejection of independent claim 1, the Examiner labels the physical device 28 of Bray as the alleged transmitter module of claim 1 and labels the auto-negotiation unit 36 of Bray as the alleged data management module of claim 1. Office Action, 2-3. However, independent claim 1 overcomes the § 102 rejection for at least the reason that Bray fails to teach the data management module of claim 1. In other words, the auto-negotiation unit 36 does not disclose the data management module of independent claim 1.

More specifically, Bray discloses that the auto-negotiation unit 36 selects the output path of the multiplexer 32 to determine the output medium over which data is communicated. Bray, 3:3-7 and 14-21. However, there is no teaching or even a suggestion in Bray that the auto-negotiation unit 36 accesses configuration information in the physical device 28 to determine a predefined transmission characteristic. Thus, Bray fails to disclose the data management module of independent claim 1 and for similar reasons fails to disclose the first transmitter module of independent claim 1. For at least these reasons, withdrawal of the § 102 rejection of independent claim 1 is requested.

Claims 2-11, 31 and 42 are patentable for at least the reason that these claims depend from an allowable claim.

The Examiner also rejects dependent claims 6 and 10 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Bray. Instead of showing where the prior art contains the alleged additional limitations presented by these claims, the Examiner takes Official Notice that an application programming interface (API) and the transmission of television data are well known in the art. However, a *prima facie* case of obviousness requires more than just a piecewise combination of elements from prior art references. Thus, even assuming, for purposes of argument, that, as contended by the Examiner, these teachings are well known in the art, the Examiner fails to show where the prior art contains the alleged suggestion or motivation to modify Bray to incorporate these elements to derive the missing claim limitations. To the extent the Examiner is relying on Official Notice for the alleged suggestion or motivation for either claim 6 or 10, Applicant challenges the Official Notice and requests a prior art reference or references that show such a suggestion or motivation in the art. M.P.E.P. § 2144.03. For example, the Examiner fails to show where the prior art contains a suggestion or motivation to modify Bray so that interface that includes an API interface is located between a data management module and a first transmitter module. Likewise, the Examiner fails to show where the prior art contains a suggestion or motivation to modify Bray so that a data management module combines digital data with television data.

Thus, withdrawal of the § 103 rejections of claims 6 and 10 is requested for at least these additional, independent reasons.

Rejections of Claims 14, 15, 17, 19, 20 and 33:

The transmission system of independent claim 14 includes a transmitter that contains configuration information that specifies a characteristic of the transmitter and a data management program to access this configuration information and modify management of data flow based on this configuration information.

Contrary to the limitations of independent claim 14, the auto-negotiation unit 36 does not access information the physical interface 28 (the alleged transmitter) and modify management data flow based on this configuration information. Without this disclosure, Bray fails to teach or even suggest the data management program and the first transmitter of claim 14. Therefore, for at least this reason, withdrawal of the § 102 rejection of claim 14 is requested. Claims 15, 17,

19, 20 and 33 are patentable for at least the reason that these claims depend from an allowable claim.

The Examiner also rejects dependent claim 15 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Bray. The Examiner takes Official Notice that the transmission of television data is well known in the art. However, a *prima facie* case of obviousness requires more than just a piecewise combination of elements from prior art references. Therefore, even assuming, for purposes of argument, that, as contended by the Examiner, this teaching is well known in the art, the Examiner fails to where the prior art contains the alleged suggestion or motivation to modify Bray to incorporate the missing element into Bray's system so that data assembled by a data management includes digital data and television data. To the extent the Examiner is relying on Official Notice for this alleged suggestion or motivation, Applicant challenges the Official Notice and requests a prior art reference or references that show the suggestion or motivation. M.P.E.P. § 2144.03. Otherwise, withdrawal of the § 103 rejection of claim 15 for at least this additional, independent reason is requested.

Rejections of Claims 21, 23, 25, 26 and 35:

The article of independent claim 21 includes a computer-readable storage medium that stores a program to cause a computer to retrieve stored information that identifies at least one transmission characteristic of a transmitter and modify data flow management based on the identified transmission characteristic(s).

Contrary to the limitations of claim 21, Bray discloses an auto-negotiation unit 36 that determines which processing speed the physical device 28 implements. However, there is no teaching or suggestion in Bray regarding instructions to cause a computer to modify data flow management based on a transmission characteristic of a transmitter that is identified by retrieved *stored* information (*emphasis added*). Rather, Bray is vague on this point and does not specify where or how the auto-negotiation unit 36 determines a processing speed that the physical device 28 implements. For example, this determination may be made in hardware only and not based on retrieved stored information. Thus, for at least the reason that Bray fails to teach all of the limitations of independent claim 21, withdrawal of the § 102 rejection of this claim is requested.

Claims 23, 25, 26 and 35 are patentable for at least the reason that these claims depend from an allowable claim.

Rejections of Claims 27, 29 and 30:

The method of independent claim 27 includes accessing stored configuration information; identifying, based on the accessed configuration information, at least one transmission characteristic by a first transmitter; and modifying data flow management based on the identified transmission characteristic(s).

Contrary to the limitations of claim 27, Bray fails to teach or even suggest modifying a data flow management based on a transmission characteristic that is identified based on accessed and *stored* configuration information. See discussion of claim 21 above. Thus, for at least the reason that Bray fails to anticipate claim 27, withdrawal of the § 102 rejections of claims 27, 28 and 30 is requested.

Rejections of Claims 46 and 48:

The computer-readable medium of independent claim 46 includes a program that stores instructions to cause a computer to retrieve stored information to identify at least one transmission characteristic of a transport medium. Furthermore, the instructions cause the computer to exchange information on a continuous basis.

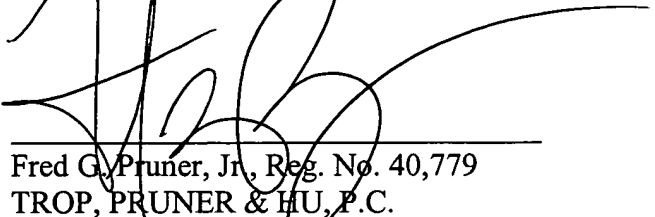
Contrary to the limitations of claim 46, Bray fails to teach or even suggest instructions to cause a computer to retrieve stored information that identifies at least one transmission characteristic of a transmitter. See discussion of claim 21 above. Furthermore, Bray fails to teach or even suggest that the physical device 28 and the auto-negotiation unit 36, the alleged data management module, exchange information on a continuous basis. Rather, Bray fails to disclose any type of exchange of information between these two entities. Thus, for at least the reason that Bray fails to teach all of the limitations of independent claim 46, withdrawal of the § 102 rejection of this claim is requested.

Claim 48 is patentable for at least the reason that this claim depends from an allowable claim.

CONCLUSION

In view of the foregoing, withdrawal of the remaining §§ 102 and 103 rejections and a favorable action in the form of Notice of Allowance are requested. The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 20-1504 (ITL.0084US).

Respectfully submitted,



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